HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2) (b)

Description of the Case.

Writ Petition No. 6974 (S/S) 2001
(Old No. 1606 of 1993)

Smt. Pushp Lata Bisht. … Petitioner

Vs.

Principal, B.S.S.V.Nainital and two ors. … Respondents

Approved for reporting.

Not approved for reporting.

Date of Decision 16 June 2006.

Initial of Judge.

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 6974(S/S) of 2001
(Old No.1606/1993)

Smt. Pushp Lata Bisht W/o Sri Khimraj Singh Bisht,
Resident of Madan Cottage, near Jauhar Bhawan,
Mallital, Nainital. ----- Petitioner.

Versus

1. Principal. Bhartiya Shaheed Sainik Vidhyalaya, Nainital.
2. District Inspector of Schools, Nainital,
3. Committee of Management, Bhartiya Shaheed Sainik Vidhyalaya, Nainital, ---- Respondents.

Sri Manoj Tewari, learned counsel for the petitioner.
Learned Standing Counsel for the respondent no. 2,
Sri K.N. Joshi, learned counsel for the committee of management.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Manoj Tewari, learned counsel for the petitioner, learned Standing Counsel for the State/ respondent no. 2 and Sri K.N. Joshi, learned counsel for respondent no. 1 & 3.

2. By means of this writ petition, the petitioner has prayed for the following reliefs:-

i. Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 01.01.1993 (annexure no. 3 to the writ petition) passed by respondent no.1,

ii. Issue a writ, order or direction in the nature of mandamus commanding the respondents not to interfere with the functioning of the petitioner as Assistant Teacher,

iii. Issue a writ, order or direction in the nature of mandamus directing the respondents to consider the claim of the petitioner for regularization in L.T. Grade,

iv. Issue any such other and further writ, order or direction as this Hon'ble Court may deem fit and proper, under the circumstances of the case,

v. Award costs of this writ petition in favour of the petitioner,

3. Brief facts, as narrated in the writ petition, are that the petitioner was appointed as ad-hoc Teacher in C.T. Grade on short term vacancy vide order dated 13.10.1987. The vacancy, against which the petitioner was appointed, occurred due to the arrest of the regular incumbent Sri Kalicharan. The approval to the appointment of the petitioner was granted by the District Inspector of Schools vide order dated 31st October 1987, which is annexed as annexure no. 1 to the writ petition. The petitioner worked as C.T. Grade Teacher till 31st September 1992 when Sri Kalicharan joined on the post, against which the petitioner was working in the Institution. On 20th September 1992, the Committee of Management passed resolution to appoint the petitioner on the post of L.T. Grade Teacher which had fallen vacant due to ad-hoc promotion of Sri Govind Singh on the post of Lecturer (Economics) as Sri Bahadur Singh who was working as Lecturer (Economics) was appointed on deputation, as Principal in Jawahar Navodaya Vidhyalaya, Tarikhet, Almora and the vacancy on the post of L.T. Grade Teacher came into existence. The then District Inspector of Schools on 06.01.1993 granted approval for appointment of the petitioner on the post of Assistant Teacher L.T. Grade on short term vacancy. The said approval is annexed as annexure no. 2A to the writ petition. Before the approval, granted by the D.I.O.S. on 06.01.1993,

could reach to the Institution, the petitioner's services were terminated by the Principal of the Institution on the ground that Sri Bahadur Singh has been absorbed in Jawahar Navodaya Vidhyalaya, Tarikhet resulting in permanent vacancy on the post of Lecturer (Economics) and the post is to be notified to the Commission. Consequently, Sri Govind Singh was also reverted to the post of Assistant Teacher L.T. Grade.

4. It is contended that the order dated 01.01.1993 passed by the Principal, reverting Sri Govind Singh back to the post of L.T. Grade Teacher, was challenged by Sri Govind Singh, before the Allahabad High Court and the Allahabad High Court on 12.01.1993 stayed operation of the order dated 01.01.1993 passed by the Principal, until further orders of the Court. The petitioner also challenged the order dated 01.01.1993 before the Allahabad High Court and the Allahabad High Court on 09.02.1993 in writ petition no. 1606 of 2003 has passed the following order:-

"The petitioner claimed to be appointed on ad-hoc basis in C.T. Grade with effect from 13.10.1987 and approval was also given by the District Inspector of Schools by order dated 13.10.1987. It appears that one Sri Govind Singh who was also working in C.T. Grade was educationally qualified and he submitted his application for consideration on a post to be filled up by direct recruitment. A vacancy on the post of Lecturer was created on account of Sri Bahadur Singh being sent on deputation. Later on the order aforesaid post of Lecturer in Economics became a clear vacancy post. Sri Govind Singh was permitted to apply as a direct recruit although he was a teacher in C.T. Grade for his candidature being considered for a post in Lecturer Grade. The appointment by direct recruitment of Sri Govind Singh as Lecturer in Economics was also approved by the Distinct Inspector of Schools by order dated 26.11.1988. this indicates that Sri Govind Singh has no lien left on the C.T. Grade post and there would be a clear vacancy to be filled up.

Smt. Pushp Lata Bisht who was also appointed in C.T. Grade has now claimed appointment in C.T./L.T. Grade on ad-hoc basis in the vacancy of Sri Govind Singh. Admittedly Sri Govind Singh was initially working in C.T. Grade and he never worked in L.T. Grade which indicates that there was no L.T. Grade post on which Sri Govind Singh was appointed. Since the petitioner is already working in C.T. Grade, there was no question of any further appointment in C.T. Grade, and she may be allowed to continue.

For the aforesaid reasons, the petitioner cannot be given any appointment in L.T. Grade. The petitioner has further indicated that another L.T. Grade post at the Institution has fallen vacant on account of the death of Smt. Swarna Kanta Sharma in January 1992 and the same has not been filled. The petitioner has laid her claim on this post.

The District Inspector of Schools, in these circumstances, is directed to consider the case of the petitioner as also of Sri Govind Singh as to whether the petitioner can be appointed in the vacancy of Swarna Kanta Sharma or not in the L.T. Grade vacancy and whether on account of Sri Govind Singh, having accepted appointment in Lecturer Grade, would retain his lien on the C.T. Grade post or not. The District Inspector of Schools would consider the case of the petitioner and Govind Singh after affording opportunity to them and after perusing the record in this regard and submit his explanation within a month of a certified copy of this order being placed before him.

List this petition after one month on 16th March 1993."

5. In pursuance of the order dated 09.02.1993 of the Allahabad High Court, the District Inspector of Schools, rejected the representation of the petitioner by holding that Sri Govind Singh still holds lien on the post in question. In any case, on 07.08.1983, the services of Sri Govind Singh were regularised on the post of Lecturer (Economics).

6. Submission of the learned counsel for the petitioner is that since Sri Govind Singh was regularised on the post of Lecturer (Economics), it cannot be presumed that he was

having lien on the post of L.T. Grade Teacher, even after his regularisation. The order of regulrisation was passed by the District Inspector of Schools on 25.01.1995 regularising the services of Sri Govind Singh on the post of Lecturer (Economics) w.e.f. 07.08.1993.

7. Counsel for the petitioner has further contended that since the order dated 01.01.1993, reverting Sri Govind Singh from the post of Lecturer (Economics) to L.T. Grade Teacher could not be given effect to in view of the stay order passed by the Allahabad High Court and further Sri Govind Singh never joined on the post of L.T. Grade Teacher, the order dated 01.01.1993 which states that on reversion of Sri Govind Singh to the post of L.T. Grade, the services of the petitioner were ceased and the order passed by the Principal of the Institution was never implemented till date so far the petitioner is concerned. I find force in the submission advanced by the learned counsel for the petitioner.

8. It is not disputed that the petitioner was appointed on the post of L.T. Grade Teacher against the vacancy which occurred on account of promotion of Sri Govind Singh on the post of Lecturer (Economics) and the approval of District Inspector of Schools dated 06.01.1993 specifically states that the approval is being granted till Sri Govind Singh would be reverted to his original post or till the end of session. Though, Sri Govind Singh was reverted back, but the reversion order was stayed by the Allahabad High Court and Sri Govind Singh did not join on his reverted post of L.T. Grade.

9. Undisputedly, the approval to the appointment of the petitioner was granted by the District Inspector of Schools vide order dated 06.01.1993 and again on the representation of the petitioner, the D.I.O.S. passed order on 30.12.1995 to make payment of salary to the petitioner. In any case, the petitioner is getting salary not from the State Exchequer but from own sources of Committee of Management. Now the petitioner has confined her prayer to provide her benefit under Section 5a of Act no. 4 of 2005 passed by the State of Uttaranchal which says that the persons who were appointed in the Lecturer's Grade or Trained Graduates Grade, against a short term vacancy on or after 14th May 1991 and before 6th August 1993 shall be considered for their regularisation by the Regularisation Committee, as per the Provisions of the Act.

10. It is also not disputed that the petitioner was appointed on 1st October 1992 against the short term vacancy in L.T. Grade which has now converted into a permanent vacancy. The approval was also granted by the District Inspector of Schools to the said appointment therefore, the termination order dated 01.01.1993 could not be given effect to because Sri Govind Singh has challenged the same before the Allahabad High Court and the Allahabad High Court has stayed the order passed by the Principal, thus the petitioner is entitled to get the benefit of the Act no. 4 of 2005.

11. Learned counsel for the petitioner has submitted that he is confining his prayer to the extent that the petitioner may be considered under the Act no. 4 of 2005 and the petitioner shall not claim salary under the Payment of Salary Act, as she is getting the salary for all this period from the Committee of Management.

12. In view of the fact that the termination of the services of the petitioner was made by a composite order on the ground that Sri Govind Singh was reverted to the post of L.T. Grade Teacher, but the reversion order was challenged by Sri Govind Singh before the High Court and the High Court had stayed the impugned order. Thus, there is no necessity for quashing of the impugned order as the same could not be given effect to and further that in view of the fact that Sri Govind Singh has already been regularised on the post of Lecturer, the order dated 1.1.1993 is irrelevant.

13. The Committee of Management is directed to send the name of the petitioner for her regularisation and the Regularisation Committee shall consider the case of the petitioner for her regularisation under the Provisions of Act no. 4 of 2005.

14. With these directions, the writ petition is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J.)

June16, 2006:
NCM: